

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
Docket #18cv2185
EASTERN PROFIT CORPORATION : 1:18-cv-02185-JGK-DCF
LIMITED, :
Plaintiff, :
- against - :
STRATEGIC VISION US, LLC, et al., :
New York, New York
Defendants. : November 8, 2019
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE DEBRA C. FREEMAN,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For Defendant - GRAVES GARRETT, LLC
Strategic Vision BY: EDWARD GREIM, ESQ.
US, LLC: JENNIFER DONNELLI, ESQ.
1100 Main Street, Suite 2700
Kansas City, Missouri 64105

For Counter Defendant - HODGSON RUSS LLP
Guo Wengui: BY: ERIN TESKE, ESQ.
605 Third Avenue, 23rd Floor
New York, New York 10518

Transcription Service: Carole Ludwig, *Transcription Services*
141 East Third Street #3E
New York, New York 10009
Phone: (212) 420-0771
Email: Transcription420@aol.com

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INDEXE X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>	<u>Court</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE COURT: Hi, it's Judge Freeman.

MR. EDWARD GREIM: Judge Freeman, good afternoon or almost evening, this is Eddie Greim and Jennifer Donnelly for Strategic Vision, and with me is Erin Teske for Mr. Guo --

MS. ERIN TESKE: Hi, Your Honor.

THE COURT: So I gather we don't have plaintiff's counsel.

MR. GREIM: We don't, although it's a question of whether Mr. Guo will be produced on Monday.

THE COURT: Right, but plaintiff's counsel might have an interest in appearing for a court conference on a topic that is at least relevant to the case. Have you been in touch, I mean shoe on the other foot, if you were plaintiff's counsel and a nonparty you might want to hear what's going on. Have you put in a call to say we're going to contact the Court and do you want to be part of that conversation?

MR. GREIM: Your Honor, all I've done is emailed MS. Teske saying we're going to call the Court, I did not separately call Ms. Cline, I'm feeling like it's a bit of an emergency but I am happy to do that. I'm happy to see if we can find her at her office and, in fact, while you were talking Ms.

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2 Donnelli ran to her office to try to get through to
3 her.

4 THE COURT: All right, well tell me, see if
5 you can, since you've got somebody on it, see if you
6 can, in fact, scare up opposing counsel, but tell me
7 what the, you know, quickly what the issue here is?
8 Somebody is suddenly unable to show for an agreed date
9 or that's not what's happening?

10 MR. GREIM: Your Honor, I received a letter
11 about forty minutes ago from Ms. Teske saying that Mr.
12 Guo cannot appear on Monday for the deposition that we
13 noticed for him. You might recall that he was
14 originally noticed for, I think it was October the 29th
15 but we reached out when we had not received an order
16 from the Court and asked that we move it back a little
17 bit because there just wouldn't have been time for,
18 you know, even if we got an order I think on that day,
19 which was, oh, I think it was October the 22nd or
20 something, we wouldn't have had time to get the
21 documents from Mr. Guo before his deposition. And we
22 also would have had, you know, costs and things to
23 cancel the court reporter. And so we asked for dates,
24 we couldn't get dates, and so we said, look, we're
25 going to be there for Han Chunguon (phonetic) on

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2 November the 11th, we're going to notice it for
3 November the 11th, if you have a different date that
4 works better, tell us but, you know, we've got to keep
5 this on the calendar. So two weeks ago we noticed
6 this for November the 11th.

7 We've been conferring with the parties about
8 the place to do this and, Your Honor, I mean I
9 literally just got a letter saying he can't appear and
10 saying that instead he will sign a six paragraph
11 affidavit saying that he doesn't have any of the
12 documents and, you know, he's had no communications,
13 that, you know, the answers the questions. And it's
14 unsigned, it's a proposed affidavit. And so, Your
15 Honor, okay, and by the way, Ms. Donnelly comes back
16 and says that Ms. Cline, who is the counsel for
17 Eastern Profit, did not pick up, although she was on
18 an email chain with Ms. Teske and I just in the last
19 half hour.

20 So, Your Honor, I don't know what to do with
21 this, I mean it's less than a business day before this
22 deposition. I spoke with Ms. Teske before we called
23 the Court and I asked when did you learn that November
24 the 11th didn't work, can you give me some other dates,
25 and the answer was, you know, they won't tell me, when

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2 they learned that November the 11th didn't work, and
3 they're not prepared to give me any other dates for
4 Mr. Guo. I mean I just, I can't work with this with
5 scheduling, I just can't do it, we're still, we've
6 noticed Goldman Spring to go on the morning of the
7 12th, we've asked for dates, we've heard nothing on
8 that, we're planning to take it on the 12th but now I'm
9 worried that maybe nobody will show up or we'll get a
10 letter that that date doesn't work.

11 I don't know what to do, I just would ask --

12 THE COURT: Let me hear on the other side.

13 MS. TESKE: Your Honor, the 11th was never an
14 agreed date, I just found out this week that my client
15 is not available, and I was working up an affidavit
16 that states, Your Honor in your order had identified
17 just three topics that are permitted in Mr. Guo's
18 deposition. And it's communications within six months
19 prior to the execution of the contract with the
20 Chinese Communist Party or government officials. Mr.
21 Guo has proposed signing an affidavit that says he has
22 had none. And whether Mr. Guo hired a research firm
23 to perform the same work as defendant, that's the
24 second topic, Mr. Guo is prepared to sign an affidavit
25 that says he didn't and didn't ask anyone else to.

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2 And the third topic was his relationship with Dilbert
3 and (indiscernible) Han and if there was a financial
4 relationship and he's prepared to say I'm acquainted
5 with them. I don't have, nor have I ever had a
6 financial relationship with them. And, by the way,
7 both of those individuals have testified to the same
8 effect.

9 So the affidavit essentially closes any
10 discovery topics that are available and he can't make
11 it on the 11th. And I've also been responding, by the
12 way, to subpoenas that were issued by Strategic to
13 Google and AT&T and T-Mobil looking for over three
14 years' worth of telephone information, private account
15 information, billing information and geographic
16 tracking information for these nonparties.

17 THE COURT: Well, hold on a second, what
18 about, I don't have it in front of me but what about
19 the aspect of my ruling which indicated that, yes, Mr.
20 Guo could be questioned about the transcript or
21 transcripts of the recorded conversations?

22 MS. TESKE: There aren't any within the six
23 months before the contract was signed and back to the
24 time period they told me to do.

25 MR. GREIM: Your Honor, that is an, I just

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2 noticed, I mean we've got our outline ready and all of
3 our things to play for him, but your order does say
4 six months before the execution, and the transcripts
5 that we gave you, the key transcripts, so actually
6 just over, they're from May. So if you count back six
7 months it actually goes to I guess June, I might be
8 wrong.

9 THE COURT: I was under the impression that
10 there were a host of recordings, there were so many
11 potential recordings that it would potentially be
12 burdensome to have everything translated, that we're
13 talking potentially about, you know, some enormous
14 number of things and so I wanted to put some
15 reasonable limitation on it and I picked six months as
16 just a reasonable limitation because I thought that
17 every conversation he had might be recorded and from
18 the way defendant's counsel was talking, it sounded to
19 me like there might be quite a lot of them. I wasn't
20 really intending to say that the one that you had
21 couldn't be questioned, you couldn't question about
22 the one that you had. I was just trying to have some
23 kind of reasonable limit. So if there isn't something
24 that was six months, but it was seven months, and, you
25 know, it would fit within a category that I described,

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2 I would allow questioning on it.

3 MR. GREIM: Yeah, Your Honor, and we don't
4 exactly know what he has, we know that these exist and
5 you can tell that, I mean you remember reading the
6 transcripts, they kind of, you can't tell that they
7 really start at the start and end at the end. And so
8 we wanted, you know, to us that's the key period.
9 There might have been something afterwards. And then
10 there's a letter that he sent in August and, you know,
11 like this proposed affidavit, if it's true, it
12 suggests that that letter is not from him. I mean I've
13 asked --

14 THE COURT: I'm sorry, a letter that he, what
15 are you talking about, a letter that he sent?

16 MR. GREIM: Yeah, I'm sorry, I know I'm
17 jumping in the weeds here. This is a letter from
18 August from Guo to the Chinese leadership that we
19 quoted in our complaint, and then it's one of the
20 things that we've cited to you where he makes these
21 pledges of what he'll do and not do. And that we
22 think shows his continuing relationship, that's from
23 August. And so that actually would be within your
24 order, but just looking at the draft six paragraph
25 affidavit I'm getting from Guo's counsel, they're

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2 saying, you know, he's saying I have no
3 communications, you know, after June. And so then yet
4 we have a video clip of him appearing on TV walking
5 through the letter.

6 So, I mean, look, an affidavit, it would be
7 wonderful if we could close off discovery with a six
8 paragraph affidavit, but what about the things that we
9 already have. We have to be able to examine him about
10 this and, I mean at least about the transcripts that
11 we have. We didn't frankly think Your Honor meant to
12 cut those off because --

13 THE COURT: Wait, wait, how many transcripts
14 do you already have and how far back do they go before
15 the date of the execution of the contract?

16 MR. GREIM: Your Honor, we have one from March
17 where he's on the phone, then we skip ahead, we've got
18 two from May, then we have one from August and I
19 believe we've got one that we're not sure of the time
20 frame of him talking with Yan Ping Wang (phonetic)
21 about research. And we don't actually know the time of
22 that. But those are the -- now we have other ones
23 that we're not going to inquire into because they're
24 not potentially with Chinese Communist Party but those
25 are the ones we have. And those are the ones we

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wanted to get into.

MS. TESKE: Your Honor, we are not able to authenticate any of those except for the May of 2017 conversation.

MR. GREIM: Although I'd like to be able to ask him that, I mean I understand counsel has said that on the phone to the Court and this is the second time, but I want to be able to ask this witness about this, and most importantly, I mean, you know, we were going to take him, not even take close to a full day frankly, right after Han Chunguon on Monday. I mean our own schedules are getting hard, I thought November 29th would give us, you know, almost too much time, but I thought surely we won't have a problem with that, and our dates keep falling through.

You know, I want to press him on these. I mean how --

THE COURT: All right. Okay. Six months back from the date of the execution would have taken you to June and you've got one in March and two in May of what you currently know about, is that right?

MR. GREIM: Right.

THE COURT: All right, look, I'm going to give you an oral modification to my order to allow you to

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2 cover this period back to March, to cover the
3 transcripts you have. I'm going to allow defense
4 counsel to pose questions and not simply accept an
5 affidavit. If he is not available on that date you
6 have to come up with another date. Please do so in a
7 way that allows this discovery to get to a reasonable
8 conclusion. If you need a carve-out from the schedule
9 to finish a deposition or two because you've been
10 crunched, rather than defend the discovery deadline I
11 would be inclined to allow a carve-out for a
12 deposition or two, if you run into scheduling
13 problems, I'll do a deposition or two. Please tell
14 your adversary I said these things, and if your
15 adversary wants to be heard, please let counsel know
16 that I will hear from all parties and I do not, it's
17 not really my intention to make ex parte rulings that
18 affect the overall schedule for a case because I'm
19 sure all parties would want to be heard on that. So
20 if counsel wants to be heard, absolutely, counsel can
21 be heard please get that message across, okay?

22 MR. GREIM: We'll do it right away, Your
23 Honor. And before we go, I guess I want to be sure
24 that we, and I hate to do this, but we've got Golden
25 Spring noticed for the morning of the 12th in New York

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and I guess I want to know can I stay in New York and will Golden Spring show up because that's Ms. Teske's client, as well.

THE COURT: So you will be traveling --

MS. TESKE: Yes, Golden Spring will be there (indiscernible).

THE COURT: Okay, now with respect to Mr. Guo, I'm not sure what happened, why there was a deposition noticed and you said it was never agreed or confirmed, I don't know how we can be this close to a date without having counsel on the same page as to whether a deposition is happening or not. I haven't seen the correspondence on that, I don't know exactly what was said, but, you know, if a deposition is noticed and if it's not objected to and it's not made clear that someone is not going to be here, the expectation can be the person will be there, that's how notices work unless something else is negotiated or it's made clear that the person cannot be there that day. So subject to confirmation as to what actually was said between the parties, you know, there is a potential here for Mr. Guo to have to foot the bill for the court reporter if that can't be cancelled without a fee. Because, you know, you've got to make it clear.

Now maybe there was correspondence, or there were telephone conversations or something where it's, listen, we can't confirm that date, we'll let you know as soon as we can but we really, you know, please don't bet on it, and so on. But, you know, if something is noticed for a certain day, unless it is changed, there's a protective order, there's a stipulated agreement otherwise, and obviously I expect cooperation between counsel to try to work with each other's schedules and the witnesses' schedules. That if you don't have anything that tells me that it's been altered or at least that there's an understanding that somebody won't be there, then the risk is that if the other side unnecessarily incurs costs because of that, that it should be on the party that was a no show.

So please have good communication and don't find yourself in that kind of a position. I'm not about to rule right now, but, you know, you've got to be on the same wavelength about what's going on here.

MR. GREIM: Your Honor, you spent, I mean we don't want to bring anything to you, we're going to jump on the line, we don't want to present that issue to you, as well, we'll try to get it worked out.

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THE COURT: All right, so go work it out --

MS. TESKE: Your Honor, can we get a --

THE COURT: Can you get a way?

MS. TESKE: Can we get a time to discuss with the Court at a later date the outstanding subpoenas to nonparties?

THE COURT: Are the nonparties moving to quash? Are you representing them?

MS. TESKE: Yes. Well we have submitted two orders now on behalf of Mr. Guo and GSHY to discuss the subpoenas that were issued to Google and AT&T And T-Mobil requesting geographic tracking information, phone call information for over three years, billing information concerning the accounts of our client.

THE COURT: Okay, so this is Mr. Guo's personal information and so he is moving to quash those subpoenas?

MS. TESKE: Right, and GSNY's and Gina Zwang's (phonetic) as well.

THE COURT: Well I'll rule that they don't have to produce the information until I rule on the questions so that you don't have cat out of the bag, but I'm not sure that these matters are fully submitted as motions to quash. Where do we stand on

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2 it?

3 MR. GREIM: Your Honor, I mean we've been
4 asking saying we will meet and confer on this, there's
5 been no effort to talk to us at all. And I mean I
6 understand another letter came through today. My first
7 thing I read was the thing about Mr. Guo, we have the
8 other letter that was apparently filed, I'm not even
9 sure what it covers. But I mean we're will to set
10 times, I mean I've dealt with the frustration of
11 trying to get everyone together, we'll set times to
12 argue it, but first I need to hear from Ms. Teske and
13 actually have a phone call to talk about it because
14 we've heard nothing.

15 THE COURT: Well, Ms. Teske, you should --

16 MS. TESKE: Your Honor, I'm just looking for a
17 time to discuss it in the future.

18 THE COURT: I understand, but, number one, I'm
19 saying that they don't have to respond till the issues
20 get resolved. Number two, I'm going to direct a full
21 good faith conference to see what you can work out
22 because you may be able to narrow these things and
23 either get them off my plate altogether or get them
24 sufficiently narrowed that it's a much shorter
25 conversation. Three, we're still missing a lawyer who

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2 might want to have a say about things if they're, or
3 even not a say, just be present in a conference on
4 this case, and I would really want to make sure
5 everybody is included. And I don't have argument from
6 both sides even if it needs to be in front of me.

7 So I'm not even sure how long it's going to
8 take to get it teed up or how much time would be
9 needed. What is your close of discovery, the end of
10 November?

11 MR. GREIM: Yes, Your Honor.

12 THE COURT: I could reserve some time,
13 assuming you can get it all briefed, either the
14 afternoon of the 14th or the morning of the 20th. Talk
15 to everybody else, talk to each other, okay, I don't,
16 this is not a criminal case where I see, you know,
17 warrants for tracking information, you know, GPS
18 location information, that sort of thing. Even in that
19 context when there are criminal investigations we are
20 very conscious of treading carefully in those sorts of
21 areas, you know, so it's not an ordinary kind of
22 information for a subpoena in a simple case. And I
23 think you need to, on defendant's side, really figure
24 out what is it you need with specificity and why, and
25 what specifically is it relevant to in terms of not

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2 the general subject matter of the action, but a
3 particular claim or defense that had been raised. And
4 please be prepared to discuss narrowing these
5 subpoenas with the counsel for the subpoenaed parties,
6 nonparties, okay?

7 MS. TESKE: Your Honor, may I represent to
8 AT&T and T-Mobil and Google that the Court has asked
9 that they withhold production until you can rule on --

10 THE COURT: That's what I said. Yes, you may,
11 I'm expecting that on any that are being challenged,
12 they do not have to respond until there's a ruling,
13 get everything teed up for a ruling, but only after
14 you fully conferred in good faith to try to work it
15 out yourself, or at least to narrow the dispute or
16 disputes. I don't want to rule on something before
17 you've had a chance to confer to see if you can work
18 it out on Your Honor, or at least get it more
19 manageable in terms of what's in front of me.

20 Okay, so go talk about it.

21 MS. TESKE: Thank you, Your Honor.

22 THE COURT: If you want one of those times
23 after you've conferred with everybody and conferred
24 with each other, I'll reserve one of those times for
25 you. Do you want a --

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MS. TESKE: Thank you, Your Honor.

THE COURT: Okay? All right, let me know.

MR. GREIM: Thank you, Your Honor.

THE COURT: You're welcome.

MR. GREIM: Have a good weekend.


THE COURT: All right, bye-bye.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Eastern Profit Corporation Limited versus Strategic Vision US, LLC, et al., Docket #18cv2185, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature



Carole Ludwig

Date: November 14, 2019